



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/3

JK:kjf&lk:ch

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT *D. NST Gen*; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or

tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells more than 600,000 cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 20.566 (1) (gc) *Administration of cigarette and tobacco product direct*
2 *marketing permits.* From the moneys received from permits issued and penalties
3 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for
4 enforcing and administering cigarette and tobacco product direct marketing permits
5 and penalties under ss. 139.345, 139.40 (2), and 139.795.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 2.** 134.65 (1) of the statutes is amended to read:

7 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
8 or 139.795 and whose business premises is not physically located in this state, shall
9 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
10 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
11 any cigarettes or tobacco products to any person not holding a license as herein
12 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a
13 license from the clerk of the city, village or town wherein such privilege is sought to
14 be exercised.

15 **SECTION 3.** 134.65 (1n) of the statutes is created to read:

16 134.65 (1n) (a) The department of revenue shall prepare an application form
17 for licenses issued under this section. In addition to the information required under
18 sub. (1m), the form shall require all of the following information:

19 1. The applicant's history relevant to the applicant's fitness to hold a license
20 under this section.

21 2. The kind of license for which the applicant is applying.

22 3. The premises where cigarettes or tobacco products will be sold or stored.

1 4. If the applicant is a corporation, the identity of the corporate officers and
2 agent.

3 5. If the applicant is a limited liability company, the identity of the company
4 members or managers and agent.

5 6. The applicant's trade name, if any.

6 7. Any other information required by the department.

7 (b) The department of revenue shall provide 1 copy of each application prepared
8 under this subsection to each city, village, and town.

9 (c) Each applicant for a license under this section shall use the application form
10 prepared under this subsection.

11 (d) 1. Each application for a license under this section shall be sworn to by the
12 applicant and the applicant shall submit the application with the clerk of the city,
13 village, or town where the intended place of sale is located.

14 2. Within 10 days of any change in any fact set forth in an application, the
15 applicant or license holder shall file a written description of the change with the clerk
16 of the city, village, or town where the application was submitted.

17 3. Any person may inspect applications submitted under this paragraph. The
18 clerk of each city, village, or town where such applications are submitted shall retain
19 all applications submitted under this paragraph, but may destroy all applications
20 that have been retained for 5 years or longer.

21 **SECTION 4.** 134.65 (1r) of the statutes is created to read:

22 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
23 any of the following applies:

24 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
25 or a conviction record.

1 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
2 of a felony, or as a repeat or habitual offender, unless pardoned.

3 3. The person has not submitted proof as provided under s. 77.61 (11).

4 (b) The requirements under par. (a) apply to all partners of a partnership, all
5 members of limited liability company, all agents of a limited liability company or
6 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and
7 111.335, if a business entity has been convicted of a crime, the entity may not be
8 issued a license under sub. (1) unless the entity has terminated its relationship with
9 the individuals whose actions directly contributed to the conviction.

10 **SECTION 5.** 134.65 (2) (a) of the statutes is amended to read:

11 134.65 (2) (a) Except Subject to sub. (1r), and except as provided in par. (b),
12 upon filing of a proper written application a license shall be issued on July 1 of each
13 year or when applied for and continue in force until the following June 30 unless
14 sooner revoked. The city, village or town may charge a fee for the license of not less
15 than \$5 nor more than \$100 per year which shall be paid to the city, village or town
16 treasurer before the license is issued.

17 **SECTION 6.** 134.65 (5) of the statutes is amended to read:

18 134.65 (5) Any person violating this section shall be fined not more than \$100
19 \$1,000 nor less than \$25 \$500 for the first offense and not more than \$200 \$5,000 nor
20 less than \$25 \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or
21 subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating~~
22 ~~this section was personally guilty of a failure to exercise due care to prevent violation~~
23 ~~thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned~~
24 ~~not exceeding 60 days or both.~~ Conviction on a 2nd or subsequent offense shall
25 immediately terminate the license of the person convicted of being personally guilty

1 of such failure to exercise due care and the person shall not be entitled to another
2 license hereunder for a period of 5 years thereafter, nor shall the person in that period
3 act as the servant or agent of a person licensed hereunder for the performance of the
4 acts authorized by such license.

5 **SECTION 7.** 134.66 (1) (a) of the statutes is amended to read:

6 134.66 (1) (a) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

7 **SECTION 8.** 134.66 (1) (am) of the statutes is created to read:

8 134.66 (1) (am) “Direct marketer” has the meaning given in s. 139.30 (2n).

9 **SECTION 9.** 134.66 (2) (a) of the statutes is amended to read:

10 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
11 subjobber, no agent, employee or independent contractor of a retailer, direct
12 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
13 of an independent contractor may sell or provide for nominal or no consideration
14 cigarettes or tobacco products to any person under the age of 18, except as provided
15 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
16 for the purchase of cigarettes or tobacco products from his or her vending machine
17 by a person under the age of 18 if the vending machine operator was unaware of the
18 purchase.

19 **SECTION 10.** 134.66 (2) (am) of the statutes is amended to read:

20 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
21 subjobber, no agent, employee or independent contractor of a retailer, direct
22 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
23 of an independent contractor may provide for nominal or no consideration cigarettes
24 or tobacco products to any person except in a place where no person younger than 18
25 years of age is present or permitted to enter unless the person who is younger than

1 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
2 who has attained the age of 18 years.

3 **SECTION 11.** 134.66 (2) (d) of the statutes is amended to read:

4 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
5 or retailer, or their employees or agents, may provide cigarettes or tobacco products
6 for nominal or no consideration to any person under the age of 18.

7 **SECTION 12.** 134.66 (2) (e) of the statutes is amended to read:

8 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
9 than as a package or container on which a stamp is affixed under s. 139.32 (1).

10 **SECTION 13.** 134.66 (3m) of the statutes is created to read:

11 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by
12 a direct marketer who sells cigarettes or tobacco products to a person under the age
13 of 18 is a defense to any prosecution for a violation under sub. (2) (a):

14 (a) That the direct marketer used a mechanism, approved by the department
15 of revenue, for verifying the age of the purchaser.

16 (b) That the purchaser falsely represented that he or she had attained the age
17 of 18 and presented a copy or facsimile of a government issued identification.

18 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,
19 matched the name and birthdate on the identification presented under par. (b).

20 (d) That the sale was made in good faith, in reasonable reliance on the
21 mechanism described in par. (a) and the representation and identification under
22 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

23 **SECTION 14.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

24 **SECTION 15.** 139.30 (1d) of the statutes is created to read:

1 139.30 (1d) “Bonded direct marketer” means any person who acquires
2 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
3 or other containers, stores them and sells them by direct marketing to consumers for
4 their own personal use and who may also acquire stamped cigarettes from
5 manufacturers or distributors for such sales.

6 **SECTION 16.** 139.30 (1s) of the statutes is created to read:

7 139.30 (1s) “Consumer” means any individual who receives cigarettes for his
8 or her personal use or consumption or any individual who has title to or possession
9 of cigarettes for any purpose other than for sale or resale.

10 **SECTION 17.** 139.30 (2n) of the statutes is created to read:

11 139.30 (2n) “Direct marketer” means a bonded direct marketer or a direct
12 marketer permittee.

13 **SECTION 18.** 139.30 (2nn) of the statutes is created to read:

14 139.30 (2nn) “Direct marketer permittee” means any person who acquires
15 stamped cigarettes from the manufacturers or distributors, stores them and sells
16 them by direct marketing to consumers for their own personal use.

17 **SECTION 19.** 139.30 (2p) of the statutes is created to read:

18 139.30 (2p) “Direct marketing” means publishing or making accessible an offer
19 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
20 in this state, using any means by which the consumer is not physically present at the
21 time of sale on a premise that sells cigarettes.

22 **SECTION 20.** 139.30 (3) of the statutes is amended to read:

23 139.30 (3) “Distributor” means any person who acquires unstamped cigarettes
24 from the manufacturer thereof, affixes stamps to the packages or other containers,
25 stores them and sells them to other permittees or to retailers for resale ~~or~~ and who

1 ~~acquires~~ may acquire stamped cigarettes from another ~~permittee~~ manufacturers or
2 distributors for such sales.

3 **SECTION 21.** 139.30 (4n) of the statutes is created to read:

4 139.30 (4n) “Government issued identification” includes a valid driver’s
5 license, state identification card, passport, or military identification.

6 **SECTION 22.** 139.30 (7) of the statutes is amended to read:

7 139.30 (7) “Manufacturer” means any person who directly manufactures
8 cigarettes for the purpose of sale, including the authorized agent of a person who
9 directly manufactures cigarettes for the purpose of sale.

10 **SECTION 23.** 139.30 (8s) of the statutes is created to read:

11 139.30 (8s) “Person” means any individual, sole proprietorship, partnership,
12 limited liability company, corporation, or association, or any owner of a single-owner
13 entity that is disregarded as a separate entity under ch. 71.

14 **SECTION 24.** 139.32 (1) of the statutes is amended to read:

15 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
16 payment, the department shall provide stamps. A person who has paid the tax shall
17 affix stamps of the proper denomination to each package in which cigarettes are
18 packed, prior to the first sale within this state. First sale does not include a sale by
19 a manufacturer to a distributor or to a direct marketer or by a distributor to a
20 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)
21 2. The tax shall be paid only once on each package or container.

22 **SECTION 25.** 139.32 (4) of the statutes is amended to read:

23 139.32 (4) In lieu of stamps the secretary may authorize impressions applied
24 by the use of ~~meter~~ machines. The secretary shall prescribe by rule the type of
25 impression and the kind of machines which may be used.

1 **SECTION 26.** 139.32 (5) of the statutes is amended to read:

2 139.32 (5) Manufacturers, bonded direct marketers, and distributors having
3 ~~a permit from the secretary who are authorized to purchase tax stamps~~ shall receive
4 a discount of ~~1.6%~~ 1.6 percent of the tax paid on stamp purchases.

5 **SECTION 27.** 139.32 (5m) of the statutes is amended to read:

6 139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall
7 pay to the department the cost of printing and shipping those stamps.

8 **SECTION 28.** 139.32 (6) of the statutes is amended to read:

9 139.32 (6) Manufacturers, bonded direct marketers, and distributors having
10 ~~a permit from the secretary who are authorized to purchase tax stamps~~ may
11 purchase stamps on credit. The secretary may require manufacturers, bonded direct
12 marketers, and distributors who purchase stamps on credit to file under the
13 conditions prescribed by the secretary by rule.

14 **SECTION 29.** 139.321 (1) (intro.) of the statutes is amended to read:

15 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of~~ 400
16 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
17 (1) and 139.33 (4).

18 **SECTION 30.** 139.321 (1) (a) 1. of the statutes is amended to read:

19 139.321 (1) (a) 1. Manufacturers, bonded direct marketers, distributors or
20 warehouse operators possessing valid permits issued by the secretary.

21 **SECTION 31.** 139.33 (3) of the statutes is amended to read:

22 139.33 (3) No person other than a member of the armed forces, as specified in
23 this subsection, a licensed distributor, or a licensed bonded direct marketer who is
24 authorized to purchase and affix tax stamps may import into this state ~~more than~~
25 400 cigarettes on which the excise tax imposed by s. 139.31 has not been paid and

1 the container of which does not bear proper stamps. Within 15 days, any such person
2 importing cigarettes shall file a declaration of such cigarettes imported and shall
3 remit therewith the tax on such cigarettes imposed by this section. Members of the
4 armed forces shall not be required to report or pay the tax on cigarettes in their
5 possession if such cigarettes are issued to them by the U.S. government or any of its
6 subdivisions or were purchased in any armed forces post exchange or service store.
7 If the use tax imposed by this section is not paid when due, it shall become delinquent
8 and the person liable for it shall pay, in addition, a penalty of \$25 for each 200
9 cigarettes. Interest on the delinquent tax and penalty shall accrue at the rate of ~~1.5%~~
10 1.5 percent per month or each fraction of a month from the date the tax became due
11 until paid.

12 **SECTION 32.** 139.34 (1) (a) of the statutes is amended to read:

13 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
14 cigarettes in this state as a distributor, manufacturer, jobber, vending machine
15 operator, direct marketer, or multiple retailer and no person may operate a
16 warehouse in this state for the storage of cigarettes for another person without first
17 filing an application for and obtaining the proper permit to perform such operations
18 from the department.

19 **SECTION 33.** 139.34 (1) (b) of the statutes is repealed.

20 **SECTION 34.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

21 139.34 (1) (c) (intro.) Subject to ss. ~~111.321, 111.322 and 111.335~~, no No permit
22 under this section may be granted to any person to whom any of the following applies:

23 **SECTION 35.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

24 **SECTION 36.** 139.34 (1) (c) 1m. of the statutes is created to read:

1 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
2 an arrest record or a conviction record.

3 **SECTION 37.** 139.34 (1) (c) 2m. of the statutes is created to read:

4 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
5 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

6 **SECTION 38.** 139.34 (1) (c) 3m. of the statutes is created to read:

7 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
8 77.61 (11).

9 **SECTION 39.** 139.34 (1) (cm) of the statutes is created to read:

10 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
11 partnership, all members of a limited liability company, all agents, director, and
12 shareholders, of a limited liability company or corporation, and all officers of a
13 corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has
14 been convicted of a crime, the entity may not be issued a permit under this subsection
15 unless the entity has terminated its relationship with the individuals whose actions
16 directly contributed to the conviction.

17 **SECTION 40.** 139.34 (3) of the statutes is amended to read:

18 139.34 (3) No distributor or bonded direct marketer may affix stamps to
19 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
20 marketer certifies to the department, in a manner prescribed by the department,
21 that the distributor or bonded direct marketer purchases cigarettes directly from a
22 manufacturer.

23 **SECTION 41.** 139.34 (4) of the statutes is amended to read:

24 139.34 (4) A separate permit shall be required of and issued to each class of
25 permittee and the holder of any permit shall perform only the operations thereby

1 authorized. Such permit shall not be transferable from one person to another or from
2 one premises to another. A separate permit shall be required for each place where
3 cigarettes are stamped or where cigarettes are stored for sale at wholesale ~~or~~,
4 through vending machines or multiple retail outlets, or by direct marketing.

5 **SECTION 42.** 139.34 (6) of the statutes is amended to read:

6 139.34 (6) A vending machine operator or a multiple retailer may acquire
7 unstamped cigarettes from the manufacturers thereof and affix the stamps to
8 packages or other containers only if the vending machine operator or multiple
9 retailer also holds a permit as a distributor or bonded direct marketer.

10 **SECTION 43.** 139.34 (8) of the statutes is amended to read:

11 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
12 the premises described in the permit. The warehouse permit shall not authorize the
13 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
14 manufacturer, direct marketer, or distributor may be delivered only to a person
15 holding a permit as a manufacturer, or as a bonded direct marketer who is authorized
16 to purchase and affix tax stamps, or distributor.

17 **SECTION 44.** 139.345 of the statutes is created to read:

18 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
19 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
20 in this state by direct marketing unless the person has obtained a permit from the
21 department to make such sales or solicitations. The person shall file an application
22 for a permit under this subsection with the department, in the manner prescribed
23 by the department, and shall submit the following fee with the application:

24 1. If the person sells less than 600,000 cigarettes annually to consumers in this
25 state by direct marketing, \$500.

1 2. If the person sells 600,000 or more cigarettes annually to consumers in this
2 state by direct marketing, \$1,000.

3 (b) A permit issued under par. (a) expires on December 31 of each year.

4 (c) The department may not issue a permit to a person under par. (a) unless the
5 person certifies to the department, in the manner prescribed by the department, that
6 the person shall acquire stamped cigarettes from a licensed distributor or
7 unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this
8 subchapter on all unstamped cigarettes and affix stamps to the cigarette packages
9 or containers as provided under s. 139.32 (1), store such packages or containers, and
10 sell only such packages or containers to consumers in this state by direct marketing;
11 or acquire cigarettes from a distributor, to the packages or containers of which
12 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages
13 or containers to consumers in this state by direct marketing.

14 (d) No person may be issued a permit under this subsection unless the person
15 certifies to the department, in the manner prescribed by the department, that all
16 cigarette sales to consumers in this state shall be credit card transactions; that the
17 invoices for all shipments of cigarette sales from the person shall bear the person's
18 name and address and permit ultimately issued under this subsection; and that the
19 person shall provide the department any information the department considers
20 necessary to administer this section.

21 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
22 sales specified in his or her permit under sub. (1) (a) unless the person pays the
23 permit fee under sub. (1) (a) that is applicable to the excess amount.

24 (b) No person may sell cigarettes in excess of the number of cigarette sales
25 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee

1 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
2 cigarettes in excess of the number of cigarette sales specified in his or her permit
3 shall pay a penalty to the department of \$1,000 or an amount that is equal to \$50 for
4 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

5 (3) (a) No person may sell cigarettes to consumers in this state by direct
6 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
7 stamps are affixed to the cigarette packages or containers as provided under s.
8 139.32.

9 (b) No person may sell cigarettes to consumers in this state by direct marketing
10 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

11 (c) No person may sell cigarettes to consumers in this state by direct marketing
12 unless the cigarette brands are approved by the department and listed in the
13 directory of certified tobacco product manufacturers and brands as provided under
14 s. 895.12 (2) (b).

15 (4) No person may sell cigarettes to a consumer in this state by direct
16 marketing unless the person verifies the consumer's identity and that the consumer
17 is at least 18 years of age by any of the following methods:

18 (a) The person uses a database, approved by the department, that includes
19 information based on public records to verify the consumer's age and identity.

20 (b) The person receives from the consumer, at the time of purchase, a notarized
21 copy of a government issued identification, the name specified on the identification
22 matches the name of the consumer, and the birth date on the identification verifies
23 that the purchaser is at least 18 years of age.

24 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
25 for verifying the age and identity of a consumer that is approved by the department.

1 (5) Any person who, without having a valid permit under sub. (1), sells or
2 solicits sales of cigarettes to consumers in this state by direct marketing shall pay
3 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
4 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
5 marketing, whichever is greater.

6 (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may
7 exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser
8 or address.

9 (b) Any person who sells cigarettes that exceed the maximum amounts under
10 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal
11 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
12 maximum amounts, whichever is greater.

13 (c) Any person who purchases cigarettes that exceed the maximum amounts
14 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the
15 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased
16 above the maximum amounts.

17 (7) No cigarettes may be shipped to a person who is under 18 years of age and
18 no cigarettes may be shipped to a post-office box. Every package used to ship tobacco
19 products that are sold as provided under this section and delivered to a person in this
20 state shall be clearly labeled to indicate that the package contains tobacco products
21 and may not be delivered to a person who is under 18 years of age.

22 (8) All revenue collected from permits and penalties under this section shall
23 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
24 administer this section.

25 **SECTION 45.** 139.35 (1) of the statutes is amended to read:

1 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
2 and no person may accept, purchase or borrow any stamps from another. All sales
3 and transfers of stamps may be made only by the secretary to permit holding
4 manufacturers, bonded direct marketers who are authorized to purchase and affix
5 tax stamps, and distributors.

6 **SECTION 46.** 139.37 (1) (a) of the statutes is amended to read:

7 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
8 ~~resale~~ solicit cigarette sales in this state ~~for any manufacturer or permittee without~~
9 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
10 certificate under s. 73.03 (50) and a salesperson's permit from the department of
11 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
12 ~~or take orders for cigarettes~~ solicit cigarette sales in this state ~~without first having~~
13 ~~such person secure~~ unless the person has filed an application for and obtained a valid
14 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
15 another person to sell cigarettes or solicit cigarette sales in this state unless the
16 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
17 and a valid permit under s. 139.34. The department shall issue the required number
18 of permits to ~~manufacturers and~~ permittees who hold a valid certificate issued under
19 s. 73.03 (50). Each application for a permit shall disclose the name and address of
20 the employer or the person for whom the sales person is soliciting and such permit
21 shall remain effective only while the salesperson represents such named employer
22 or person. If such salesperson is thereafter employed by another ~~manufacturer or~~
23 ~~permittee person~~, the salesperson shall obtain a new salesperson's permit. Each
24 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
25 resignation or dismissal of any such salesperson holding a permit.

1 **SECTION 47.** 139.38 (1) of the statutes is amended to read:

2 139.38 (1) Every manufacturer located out of the state shall keep records of all
3 sales of cigarettes shipped into this state. Every manufacturer located in the state
4 shall keep records of production, sales and withdrawals of cigarettes. Every
5 distributor and direct marketer shall keep records of purchases and sales of
6 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
7 ~~permit from the secretary with the right~~ who is authorized to purchase and apply
8 stamps shall also keep records of purchases and disposition of stamps. Every jobber,
9 multiple retailer, and vending machine operator shall keep records of all purchases
10 and disposition of cigarettes. Every warehouse operator shall keep records of
11 receipts and withdrawals of cigarettes. All such records shall be accurate and
12 complete and be kept in a manner prescribed by the secretary. These records shall
13 be preserved on the premises described in the permit or license in such a manner as
14 to ensure permanency and accessibility for inspection at reasonable hours by
15 authorized personnel of the department.

16 **SECTION 48.** 139.38 (1m) of the statutes is created to read:

17 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
18 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
19 state in the month preceding the report under sub. (2), the invoice date and number;
20 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
21 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
22 address, and birth date; the name of the person to whom the cigarettes were shipped;
23 the address to which the cigarettes were shipped; and any other information the
24 department requires.

25 **SECTION 49.** 139.38 (2) of the statutes is amended to read:

1 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
2 distributor, jobber, and direct marketer shall render a true and correct invoice of
3 every sale of cigarettes ~~at wholesale~~ and every permittee shall on or before the 15th
4 day of each calendar month file a verified report of all cigarettes purchased, sold,
5 received, warehoused or withdrawn during the preceding calendar month.

6 (b) The department may allow any jobber, multiple retailer, direct marketer
7 permittee, or vending machine operator permittee who does not sell cigarettes,
8 except for those on which the tax under this chapter is paid, to file a quarterly report.
9 The quarterly report shall be filed on or before the 15th day of the next month
10 following the close of each calendar quarter. The report shall specify the number of
11 cigarettes purchased and sold during the preceding calendar quarter.

12 **SECTION 50.** 139.395 of the statutes is amended to read:

13 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
14 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on
15 which the tax under this subchapter has become due and has not been paid are trust
16 funds in the hands of the distributor, bonded direct marketer, or manufacturer and
17 are the property of this state. Any distributor, bonded direct marketer, or
18 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette
19 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),
20 whether or not the distributor, bonded direct marketer, or manufacturer has or
21 claims to have an interest in those moneys.

22 **SECTION 51.** 139.40 (2) of the statutes is amended to read:

23 139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~
24 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.
25 (1) may be given to law enforcement officers to use in criminal investigations or sold

1 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
2 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds
3 of the sale shall be paid into the state treasury, except that proceeds from the sale
4 of cigarettes seized from a direct marketer and obtained through the administration
5 of this subsection shall be credited to the appropriation account under s. 20.566 (1)
6 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
7 use in criminal investigations or for sale or that those uses would otherwise be
8 impractical, the secretary may order them destroyed or give them to a charitable or
9 penal institution for free distribution to patients or inmates.

10 **SECTION 52.** 139.44 (3) of the statutes is amended to read:

11 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
12 to 139.42 or 139.77 to 139.82 shall be fined not less than ~~\$100~~ \$500 nor more than
13 ~~\$500~~ \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than
14 \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or
15 subsequent offense.

16 **SECTION 53.** 139.44 (4) of the statutes is amended to read:

17 139.44 (4) Any person who refuses to permit the examination or inspection
18 authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than \$500 nor more
19 than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be
20 cause for immediate suspension or revocation of permit by the secretary.

21 **SECTION 54.** 139.44 (6m) of the statutes is created to read:

22 139.44 (6m) Any person who manufactures or sells cigarettes in this state
23 without holding the proper permit issued under this subchapter is guilty of a Class
24 I felony.

25 **SECTION 55.** 139.44 (7) of the statutes is amended to read:

1 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
2 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
3 person convicted of a 2nd or subsequent offense shall be automatically revoked and
4 ~~he or she, the person~~ shall not be granted another permit for a period of 2 5 years
5 following such revocation, and, for the 5 year period following revocation, the person
6 shall not act as the employee or agent of a permittee under this subchapter to perform
7 acts authorized by any permit issued to the permittee under this subchapter.

8 **SECTION 56.** 139.45 of the statutes is amended to read:

9 **139.45 Prosecutions by attorney general.** Upon request by the secretary
10 of revenue, the attorney general may represent this state or assist a district attorney
11 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

12 **SECTION 57.** 139.75 (2) of the statutes is amended to read:

13 139.75 (2) “Consumer” means any individual who receives tobacco products for
14 his or her personal use or consumption or any person individual who has title to or
15 possession of tobacco products ~~in storage for use or other consumption in this state~~
16 any purpose other than for sale or resale.

17 **SECTION 58.** 139.75 (3g) of the statutes is created to read:

18 139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco
19 products to consumers in this state by direct marketing.

20 **SECTION 59.** 139.75 (3r) of the statutes is created to read:

21 139.75 (3r) “Direct marketing” means publishing or making accessible an offer
22 for the sale of tobacco products to consumers in this state, or selling tobacco products
23 to consumers in this state, using any means by which the consumer is not physically
24 present on a premise that sells tobacco products.

25 **SECTION 60.** 139.75 (4) (a) of the statutes is amended to read:

1 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
2 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
3 the state any tobacco products for sale;

4 **SECTION 61.** 139.75 (4) (c) of the statutes is amended to read:

5 139.75 (4) (c) Any person outside this state engaged in the business of selling
6 tobacco products ~~outside this state~~ who ships or transports tobacco products to
7 retailers in this state to be sold by those retailers.

8 **SECTION 62.** 139.75 (4) (cm) of the statutes is created to read:

9 139.75 (4) (cm) Any person outside this state engaged in the business of selling
10 tobacco products who ships or transports tobacco products to consumers in this state.

11 **SECTION 63.** 139.75 (4n) of the statutes is created to read:

12 139.75 (4n) “Government issued identification” includes a valid driver’s
13 license, state identification card, passport, or military identification.

14 **SECTION 64.** 139.75 (5s) of the statutes is created to read:

15 139.75 (5s) “Person” means any individual, sole proprietorship, partnership,
16 limited liability company, corporation, or association, or any owner of a single-owner
17 entity that is disregarded as a separate entity under ch. 71.

18 **SECTION 65.** 139.75 (7) of the statutes is amended to read:

19 139.75 (7) “Retail outlet” means each place of business from which tobacco
20 products are sold to consumers by a retailer.

21 **SECTION 66.** 139.75 (12) of the statutes is amended to read:

22 139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;
23 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
24 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;
25 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds

1 and forms of tobacco prepared in such manner as to be suitable for chewing or
2 smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco
3 products” does not include cigarettes, as defined under s. 139.30 (1) (1m).

4 **SECTION 67.** 139.76 (3) of the statutes is created to read:

5 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
6 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
7 products.

8 **SECTION 68.** 139.78 (1m) of the statutes is created to read:

9 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
10 distributor with a valid permit under s. 139.79 may import into this state tobacco
11 products for which the tax imposed under s. 139.76 (1) has not been paid.

12 **SECTION 69.** 139.79 (title) of the statutes is amended to read:

13 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

14 **SECTION 70.** 139.79 (1) of the statutes is amended to read:

15 139.79 (1) No person may engage in the business of a distributor, direct
16 marketer, or subjobber of tobacco products at any place of business unless that
17 person has filed an application for and obtained a permit from the department to
18 engage in that business at such place.

19 **SECTION 71.** 139.79 (2) of the statutes is amended to read:

20 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
21 this section.

22 **SECTION 72.** 139.795 of the statutes is created to read:

23 **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by
24 direct marketing to consumers in this state as a direct marketer or solicit sales of
25 tobacco products to consumers in this state by direct marketing unless the person has

1 obtained a permit from the department to make such sales or solicitations. The
2 person shall file an application for a permit under this subsection with the
3 department, in the manner prescribed by the department, and shall submit a \$500
4 fee with the application.

5 (b) No person may be issued a permit under this subsection unless the person
6 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
7 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
8 this subsection.

9 (c) A permit issued under this subsection expires on December 31 of each year.

10 (d) No person may be issued a permit under this subsection unless the person
11 certifies to the department, in the manner prescribed by the department, that all
12 tobacco product sales to consumers in this state shall be credit card transactions; that
13 the invoice for all shipments of tobacco product sales from the person shall bear the
14 person's name and address and permit ultimately issued under this subsection; and
15 that the person shall provide the department any information the department
16 considers necessary to administer this section.

17 (2) No person may sell tobacco products to consumers in this state by direct
18 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has
19 been paid with regard to such products.

20 (3) No person may sell tobacco products to a consumer in this state by direct
21 marketing unless the person does all of the following:

22 (a) The person uses a mechanism, approved by the department, to verify the
23 consumer's age.

1 (b) The person receives from the consumer, at the time of purchase, a copy or
2 facsimile of a government issued identification, the name specified on the
3 identification matches the name of the consumer.

4 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
5 for verifying the age and identity of a consumer that is approved by the department.

6 (4) Any person who, without having a valid permit under sub. (1), sells or
7 solicits sales of tobacco products to consumers in this state by direct marketing shall
8 pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent
9 of the tax due on the tobacco products the person sold, without having a valid permit
10 under sub. (1), to consumers in this state by direct marketing, whichever is greater.

11 (5) No tobacco products may be shipped or delivered to a person who is under
12 18 years of age and no tobacco products may be shipped to a post-office box. Every
13 package used to ship tobacco products that are sold as provided under this section
14 and delivered to a person in this state shall be clearly labeled to indicate that the
15 package contains tobacco products and may not be delivered to a person who is under
16 18 years of age.

17 (6) All revenue collected from permits and penalties under this section shall
18 be credited to the appropriation account under s. 20.566 (1) (gc).

19 **SECTION 73.** 139.81 (1) of the statutes is amended to read:

20 139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~
21 solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~
22 unless the person has filed an application for and obtained a valid certificate under
23 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~
24 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or
25 solicit sales of tobacco products in this state unless the person has filed an application

for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.
No person may authorize another person to sell tobacco products or solicit sales of tobacco products in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

Each application for a permit shall disclose the name and address of the employer and shall remain effective only while the salesperson represents the named employer. If the salesperson is thereafter employed by another ~~manufacturer or permittee person~~ the salesperson shall obtain a new salesperson's permit. Each ~~manufacturer and~~ permittee shall notify the department within 10 days after the resignation or dismissal of any salesperson holding a permit.

SECTION 74. 139.81 (2) of the statutes is amended to read:

139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this section.

SECTION 75. 254.911 (1) of the statutes is amended to read:

254.911 (1) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

SECTION 76. 891.455 (4) of the statutes is amended to read:

891.455 (4) The presumption under sub. (2) for cancers caused by smoking or tobacco product use shall not apply to any municipal fire fighter who smokes cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined in s. 139.75 (12), after January 1, 2001.

SECTION 9441. Effective dates; revenue.

(1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The repeal of section 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. of the statutes, the renumbering of section 139.30 (1) of the statutes, the amendment of sections 134.65 (1), 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (d), 134.66 (2)

77.61(11)

(e), 139.30 (3), 139.30 (7), 139.32 (1), 139.32 (4), 139.32 (5), 139.32 (5m), 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1) (a), 139.34 (1) (c) (intro.), 139.34 (3), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a), 139.38 (1), 139.38 (2), 139.395, 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (12), 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1), 139.81 (2), 254.911 (1) and 891.455 (4), of the statutes and the creation of sections 20.566 (1) (gc), 134.65 (1n), 134.65 (1r), 134.66 (1) (am), 134.66 (3m), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2nn), 139.30 (2p), 139.30 (4n), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1) (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r), 139.75 (4) (cm), 139.75 (4n), 139.75 (5s), 139.76 (3), 139.78 (1m) and 139.795 of the statutes take effect on July 1, 2006.

(END)

Amend 5-3

Section #. 77.61 (11) of the statutes is amended to read:

77.61 (11) Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit as required by this subchapter or has been informed by an employee of the department that the department will issue a seller's permit to that person.

History: 1971 c. 125; 1975 c. 186, 224; 1977 c. 29, 200, 418; 1979 c. 89, 125, 174; 1981 c. 20; 1983 a. 189 s. 329 (12); 1983 a. 405; 1983 a. 544 s. 47 (1); 1985 a. 29, 41; 1987 a. 27, 92, 119, 246; 1989 a. 31, 122, 359; 1991 a. 39, 269, 316; 1993 a. 205, 399; 1995 a. 27, 233, 280; 1997 a. 27, 191, 237; 1999 a. 83; 2001 a. 44, 103.

registered
or is registered to collect, report, and remit
use tax under

register
or register that person to
collect, report, and remit
use tax

end of 5-5

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Tuesday, January 25, 2005 4:36 PM
To: Kreye, Joseph
Cc: Lashore, Patricia M
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products



05-1598/2



05-1598/2dn

Joe - Can you please remove the appropriation - look like it is still in /4? Thanks - Jenny

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Thursday, January 20, 2005 3:35 PM
To: Kreye, Joseph
Cc: Lashore, Patricia M
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products

Hi Joseph - In addition, to comments that DOR is going to be faxing you shortly (on this one and on streamlined sales tax), please eliminate the appropriation in this draft. The permitting revenue will be treated as GPR-Earned and DOR will have to use base resources to enforce.

Thanks much - Jennifer

-----Original Message-----

From: Nelson, Linda
Sent: Tuesday, January 18, 2005 12:49 PM
To: Kraus, Jennifer - DOA
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products

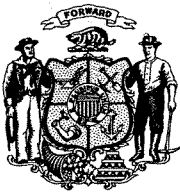
-----Original Message-----

From: Merry-Mason, Monica
Sent: Tuesday, January 18, 2005 12:47 PM
To: Linda Nelson (E-mail)
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products

> -----

> **From:** Haugen, Caroline[SMTP:CAROLINE.HAUGEN@LEGIS.STATE.WI.US]
> **Sent:** Tuesday, January 18, 2005 12:47:27 PM
> **To:** Koskinen, John
> **Cc:** Hanaman, Cathlene; Haugen, Caroline; Merry-Mason, Monica
> **Subject:** LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products
> Auto forwarded by a Rule

>
Following is the PDF version of draft 05-1598/2.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/4
JK:kjf/lk/cjs:jf

TWLj
RMA

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

in 1-26-05

Today
please

1 ^{DO NOT GEN}
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or

tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells more than 600,000 cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 20.566 (1) (gc) of the statutes is created to read:

1 ~~20.566 (1) (gc) Administration of cigarette and tobacco product direct~~
2 ~~marketing permits. From the moneys received from permits issued and penalties~~
3 ~~assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for~~
4 ~~enforcing and administering cigarette and tobacco product direct marketing permits~~
5 ~~and penalties under ss. 139.345, 139.40 (2), and 139.795.~~

6 **SECTION 2.** 77.61 (11) of the statutes is amended to read:

7 77.61 (11) Any city, village or town clerk or other official whose duty it is to issue
8 licenses or permits to engage in a business involving the sale at retail of tangible
9 personal property subject to tax under this subchapter, or the furnishing of services
10 so subject to tax, shall, before issuing such license or permit, require proof that the
11 person to whom such license or permit is to be issued is the holder of a seller's permit
12 as required by or is registered to collect, report, and remit use tax under this
13 subchapter or has been informed by an employee of the department that the
14 department will issue a seller's permit to that person or register that person to
15 collect, report, and remit use tax.

 ****NOTE: This SECTION involves a change in an appropriation that must be
 reflected in the revised schedule in s. 20.005, stats.

16 **SECTION 3.** 134.65 (1) of the statutes is amended to read:

17 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
18 or 139.795 and whose business premises is not physically located in this state, shall
19 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
20 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
21 any cigarettes or tobacco products to any person not holding a license as herein
22 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a

SECTION 3

1 license from the clerk of the city, village or town wherein such privilege is sought to
2 be exercised.

3 **SECTION 4.** 134.65 (1n) of the statutes is created to read:

4 134.65 (1n) (a) The department of revenue shall prepare an application form
5 for licenses issued under this section. In addition to the information required under
6 sub. (1m), the form shall require all of the following information:

7 1. The applicant's history relevant to the applicant's fitness to hold a license
8 under this section.

9 2. The kind of license for which the applicant is applying.

10 3. The premises where cigarettes or tobacco products will be sold or stored.

11 4. If the applicant is a corporation, the identity of the corporate officers and
12 agent.

13 5. If the applicant is a limited liability company, the identity of the company
14 members or managers and agent.

15 6. The applicant's trade name, if any.

16 7. Any other information required by the department.

17 (b) The department of revenue shall provide 1 copy of each application prepared
18 under this subsection to each city, village, and town.

19 (c) Each applicant for a license under this section shall use the application form
20 prepared under this subsection.

21 (d) 1. Each application for a license under this section shall be sworn to by the
22 applicant and the applicant shall submit the application with the clerk of the city,
23 village, or town where the intended place of sale is located.

1 2. Within 10 days of any change in any fact set forth in an application, the
2 applicant or license holder shall file a written description of the change with the clerk
3 of the city, village, or town where the application was submitted.

4 3. Any person may inspect applications submitted under this paragraph. The
5 clerk of each city, village, or town where such applications are submitted shall retain
6 all applications submitted under this paragraph, but may destroy all applications
7 that have been retained for 5 years or longer.

8 **SECTION 5.** 134.65 (1r) of the statutes is created to read:

9 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
10 any of the following applies:

11 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
12 or a conviction record.

13 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
14 of a felony, or as a repeat or habitual offender, unless pardoned.

15 3. The person has not submitted proof as provided under s. 77.61 (11).

16 (b) The requirements under par. (a) apply to all partners of a partnership, all
17 members of limited liability company, all agents of a limited liability company or
18 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and
19 111.335, if a business entity has been convicted of a crime, the entity may not be
20 issued a license under sub. (1) unless the entity has terminated its relationship with
21 the individuals whose actions directly contributed to the conviction.

22 **SECTION 6.** 134.65 (2) (a) of the statutes is amended to read:

23 134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b),
24 upon filing of a proper written application a license shall be issued on July 1 of each
25 year or when applied for and continue in force until the following June 30 unless

1 sooner revoked. The city, village or town may charge a fee for the license of not less
2 than \$5 nor more than \$100 per year which shall be paid to the city, village or town
3 treasurer before the license is issued.

4 **SECTION 7.** 134.65 (5) of the statutes is amended to read:

5 134.65 (5) Any person violating this section shall be fined not more than \$100
6 \$1,000 nor less than ~~\$25~~ \$500 for the first offense and not more than ~~\$200~~ \$5,000 nor
7 less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or
8 subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating~~
9 ~~this section was personally guilty of a failure to exercise due care to prevent violation~~
10 ~~thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned~~
11 ~~not exceeding 60 days or both.~~ Conviction on a 2nd or subsequent offense shall
12 immediately terminate the license of the person convicted of being personally guilty
13 of such failure to exercise due care and the person shall not be entitled to another
14 license hereunder for a period of 5 years thereafter, nor shall the person in that period
15 act as the servant or agent of a person licensed hereunder for the performance of the
16 acts authorized by such license.

17 **SECTION 8.** 134.66 (1) (a) of the statutes is amended to read:

18 134.66 (1) (a) “Cigarette” has the meaning given in s. 139.30 (1) (1m).

19 **SECTION 9.** 134.66 (1) (am) of the statutes is created to read:

20 134.66 (1) (am) “Direct marketer” has the meaning given in s. 139.30 (2n).

21 **SECTION 10.** 134.66 (2) (a) of the statutes is amended to read:

22 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
23 subjobber, no agent, employee or independent contractor of a retailer, direct
24 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
25 of an independent contractor may sell or provide for nominal or no consideration

1 cigarettes or tobacco products to any person under the age of 18, except as provided
2 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
3 for the purchase of cigarettes or tobacco products from his or her vending machine
4 by a person under the age of 18 if the vending machine operator was unaware of the
5 purchase.

6 **SECTION 11.** 134.66 (2) (am) of the statutes is amended to read:

7 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
8 subjobber, no agent, employee or independent contractor of a retailer, direct
9 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
10 of an independent contractor may provide for nominal or no consideration cigarettes
11 or tobacco products to any person except in a place where no person younger than 18
12 years of age is present or permitted to enter unless the person who is younger than
13 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
14 who has attained the age of 18 years.

15 **SECTION 12.** 134.66 (2) (d) of the statutes is amended to read:

16 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
17 or retailer, or their employees or agents, may provide cigarettes or tobacco products
18 for nominal or no consideration to any person under the age of 18.

19 **SECTION 13.** 134.66 (2) (e) of the statutes is amended to read:

20 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
21 than as a package or container on which a stamp is affixed under s. 139.32 (1).

22 **SECTION 14.** 134.66 (3m) of the statutes is created to read:

23 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by
24 a direct marketer who sells cigarettes or tobacco products to a person under the age
25 of 18 is a defense to any prosecution for a violation under sub. (2) (a):

1 (a) That the direct marketer used a mechanism, approved by the department
2 of revenue, for verifying the age of the purchaser.

3 (b) That the purchaser falsely represented that he or she had attained the age
4 of 18 and presented a copy or facsimile of a government issued identification.

5 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,
6 matched the name and birthdate on the identification presented under par. (b).

7 (d) That the sale was made in good faith, in reasonable reliance on the
8 mechanism described in par. (a) and the representation and identification under
9 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

10 **SECTION 15.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

11 **SECTION 16.** 139.30 (1d) of the statutes is created to read:

12 139.30 (1d) “Bonded direct marketer” means any person who acquires
13 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
14 or other containers, stores them and sells them by direct marketing to consumers for
15 their own personal use and who may also acquire stamped cigarettes from
16 manufacturers or distributors for such sales.

17 **SECTION 17.** 139.30 (1s) of the statutes is created to read:

18 139.30 (1s) “Consumer” means any individual who receives cigarettes for his
19 or her personal use or consumption or any individual who has title to or possession
20 of cigarettes for any purpose other than for sale or resale.

21 **SECTION 18.** 139.30 (2n) of the statutes is created to read:

22 139.30 (2n) “Direct marketer” means a bonded direct marketer or a direct
23 marketer permittee.

24 **SECTION 19.** 139.30 (2nn) of the statutes is created to read:

1 139.30 (2nn) “Direct marketer permittee” means any person who acquires
2 stamped cigarettes from the manufacturers or distributors, stores them and sells
3 them by direct marketing to consumers for their own personal use.

4 **SECTION 20.** 139.30 (2p) of the statutes is created to read:

5 139.30 (2p) “Direct marketing” means publishing or making accessible an offer
6 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
7 in this state, using any means by which the consumer is not physically present at the
8 time of sale on a premise that sells cigarettes.

9 **SECTION 21.** 139.30 (3) of the statutes is amended to read:

10 139.30 (3) “Distributor” means any person who acquires unstamped cigarettes
11 from the manufacturer thereof, affixes stamps to the packages or other containers,
12 stores them and sells them to other permittees or to retailers for resale ~~or~~ and who
13 acquires may acquire stamped cigarettes from another ~~permittee~~ manufacturers or
14 distributors for such sales.

15 **SECTION 22.** 139.30 (4n) of the statutes is created to read:

16 139.30 (4n) “Government issued identification” includes a valid driver’s
17 license, state identification card, passport, or military identification.

18 **SECTION 23.** 139.30 (7) of the statutes is amended to read:

19 139.30 (7) “Manufacturer” means any person who directly manufactures
20 cigarettes for the purpose of sale, including the authorized agent of a person who
21 directly manufactures cigarettes for the purpose of sale.

22 **SECTION 24.** 139.30 (8s) of the statutes is created to read:

23 139.30 (8s) “Person” means any individual, sole proprietorship, partnership,
24 limited liability company, corporation, or association, or any owner of a single-owner
25 entity that is disregarded as a separate entity under ch. 71.

1 **SECTION 25.** 139.32 (1) of the statutes is amended to read:

2 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
3 payment, the department shall provide stamps. A person who has paid the tax shall
4 affix stamps of the proper denomination to each package in which cigarettes are
5 packed, prior to the first sale within this state. First sale does not include a sale by
6 a manufacturer to a distributor or to a direct marketer or by a distributor to a
7 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)
8 2. The tax shall be paid only once on each package or container.

9 **SECTION 26.** 139.32 (4) of the statutes is amended to read:

10 139.32 (4) In lieu of stamps the secretary may authorize impressions applied
11 by the use of ~~meter~~ machines. The secretary shall prescribe by rule the type of
12 impression and the kind of machines which may be used.

13 **SECTION 27.** 139.32 (5) of the statutes is amended to read:

14 139.32 (5) Manufacturers, bonded direct marketers, and distributors ~~having~~
15 ~~a permit from the secretary who are authorized to purchase tax stamps~~ shall receive
16 a discount of ~~1.6%~~ 1.6 percent of the tax paid on stamp purchases.

17 **SECTION 28.** 139.32 (5m) of the statutes is amended to read:

18 139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall
19 pay to the department the cost of printing and shipping those stamps.

20 **SECTION 29.** 139.32 (6) of the statutes is amended to read:

21 139.32 (6) Manufacturers, bonded direct marketers, and distributors ~~having~~
22 ~~a permit from the secretary who are authorized to purchase tax stamps~~ may
23 purchase stamps on credit. The secretary may require manufacturers, bonded direct
24 marketers, and distributors who purchase stamps on credit to file under the
25 conditions prescribed by the secretary by rule.

1 **SECTION 30.** 139.321 (1) (intro.) of the statutes is amended to read:

2 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
3 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
4 (1) and 139.33 (4).

5 **SECTION 31.** 139.321 (1) (a) 1. of the statutes is amended to read:

6 139.321 (1) (a) 1. Manufacturers, bonded direct marketers, distributors or
7 warehouse operators possessing valid permits issued by the secretary.

8 **SECTION 32.** 139.33 (3) of the statutes is amended to read:

9 139.33 (3) No person other than a member of the armed forces, as specified in
10 this subsection, a licensed distributor, or a licensed bonded direct marketer who is
11 authorized to purchase and affix tax stamps may import into this state ~~more than~~
12 400 cigarettes on which the excise tax imposed by s. 139.31 has not been paid and
13 the container of which does not bear proper stamps. Within 15 days, any such person
14 importing cigarettes shall file a declaration of such cigarettes imported and shall
15 remit therewith the tax on such cigarettes imposed by this section. Members of the
16 armed forces shall not be required to report or pay the tax on cigarettes in their
17 possession if such cigarettes are issued to them by the U.S. government or any of its
18 subdivisions or were purchased in any armed forces post exchange or service store.
19 If the use tax imposed by this section is not paid when due, it shall become delinquent
20 and the person liable for it shall pay, in addition, a penalty of \$25 for each 200
21 cigarettes. Interest on the delinquent tax and penalty shall accrue at the rate of ~~1.5%~~
22 1.5 percent per month or each fraction of a month from the date the tax became due
23 until paid.

24 **SECTION 33.** 139.34 (1) (a) of the statutes is amended to read:

1 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
2 cigarettes in this state as a distributor, manufacturer, jobber, vending machine
3 operator, direct marketer, or multiple retailer and no person may operate a
4 warehouse in this state for the storage of cigarettes for another person without first
5 filing an application for and obtaining the proper permit to perform such operations
6 from the department.

7 **SECTION 34.** 139.34 (1) (b) of the statutes is repealed.

8 **SECTION 35.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

9 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit
10 under this section may be granted to any person to whom any of the following applies:

11 **SECTION 36.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

12 **SECTION 37.** 139.34 (1) (c) 1m. of the statutes is created to read:

13 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
14 an arrest record or a conviction record.

15 **SECTION 38.** 139.34 (1) (c) 2m. of the statutes is created to read:

16 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
17 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

18 **SECTION 39.** 139.34 (1) (c) 3m. of the statutes is created to read:

19 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
20 77.61 (11).

21 **SECTION 40.** 139.34 (1) (cm) of the statutes is created to read:

22 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
23 partnership, all members of a limited liability company, all agents, director, and
24 shareholders, of a limited liability company or corporation, and all officers of a
25 corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has

1 been convicted of a crime, the entity may not be issued a permit under this subsection
2 unless the entity has terminated its relationship with the individuals whose actions
3 directly contributed to the conviction.

4 **SECTION 41.** 139.34 (3) of the statutes is amended to read:

5 139.34 (3) No distributor or bonded direct marketer may affix stamps to
6 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
7 marketer certifies to the department, in a manner prescribed by the department,
8 that the distributor or bonded direct marketer purchases cigarettes directly from a
9 manufacturer.

10 **SECTION 42.** 139.34 (4) of the statutes is amended to read:

11 139.34 (4) A separate permit shall be required of and issued to each class of
12 permittee and the holder of any permit shall perform only the operations thereby
13 authorized. Such permit shall not be transferable from one person to another or from
14 one premises to another. A separate permit shall be required for each place where
15 cigarettes are stamped or where cigarettes are stored for sale at wholesale ~~or~~,
16 through vending machines or multiple retail outlets, or by direct marketing.

17 **SECTION 43.** 139.34 (6) of the statutes is amended to read:

18 139.34 (6) A vending machine operator or a multiple retailer may acquire
19 unstamped cigarettes from the manufacturers thereof and affix the stamps to
20 packages or other containers only if the vending machine operator or multiple
21 retailer also holds a permit as a distributor or bonded direct marketer.

22 **SECTION 44.** 139.34 (8) of the statutes is amended to read:

23 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
24 the premises described in the permit. The warehouse permit shall not authorize the
25 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a

1 manufacturer, direct marketer, or distributor may be delivered only to a person
2 holding a permit as a manufacturer, or as a bonded direct marketer who is authorized
3 to purchase and affix tax stamps, or distributor.

4 **SECTION 45.** 139.345 of the statutes is created to read:

5 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
6 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
7 in this state by direct marketing unless the person has obtained a permit from the
8 department to make such sales or solicitations. The person shall file an application
9 for a permit under this subsection with the department, in the manner prescribed
10 by the department, and shall submit the following fee with the application:

11 1. If the person sells less than 600,000 cigarettes annually to consumers in this
12 state by direct marketing, \$500.

13 2. If the person sells 600,000 or more cigarettes annually to consumers in this
14 state by direct marketing, \$1,000.

15 (b) A permit issued under par. (a) expires on December 31 of each year.

16 (c) The department may not issue a permit to a person under par. (a) unless the
17 person certifies to the department, in the manner prescribed by the department, that
18 the person shall acquire stamped cigarettes from a licensed distributor or
19 unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this
20 subchapter on all unstamped cigarettes and affix stamps to the cigarette packages
21 or containers as provided under s. 139.32 (1), store such packages or containers, and
22 sell only such packages or containers to consumers in this state by direct marketing;
23 or acquire cigarettes from a distributor, to the packages or containers of which
24 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages
25 or containers to consumers in this state by direct marketing.

1 (d) No person may be issued a permit under this subsection unless the person
2 certifies to the department, in the manner prescribed by the department, that all
3 cigarette sales to consumers in this state shall be credit card transactions; that the
4 invoices for all shipments of cigarette sales from the person shall bear the person's
5 name and address and permit ultimately issued under this subsection; and that the
6 person shall provide the department any information the department considers
7 necessary to administer this section.

8 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
9 sales specified in his or her permit under sub. (1) (a) unless the person pays the
10 permit fee under sub. (1) (a) that is applicable to the excess amount.

11 (b) No person may sell cigarettes in excess of the number of cigarette sales
12 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee
13 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
14 cigarettes in excess of the number of cigarette sales specified in his or her permit
15 shall pay a penalty to the department of \$1,000 or an amount that is equal to \$50 for
16 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

17 (3) (a) No person may sell cigarettes to consumers in this state by direct
18 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
19 stamps are affixed to the cigarette packages or containers as provided under s.
20 139.32.

21 (b) No person may sell cigarettes to consumers in this state by direct marketing
22 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

23 (c) No person may sell cigarettes to consumers in this state by direct marketing
24 unless the cigarette brands are approved by the department and listed in the

1 directory of certified tobacco product manufacturers and brands as provided under
2 s. 895.12 (2) (b).

3 (4) No person may sell cigarettes to a consumer in this state by direct
4 marketing unless the person verifies the consumer's identity and that the consumer
5 is at least 18 years of age by any of the following methods:

6 (a) The person uses a database, approved by the department, that includes
7 information based on public records to verify the consumer's age and identity.

8 (b) The person receives from the consumer, at the time of purchase, a notarized
9 copy of a government issued identification, the name specified on the identification
10 matches the name of the consumer, and the birth date on the identification verifies
11 that the purchaser is at least 18 years of age.

12 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
13 for verifying the age and identity of a consumer that is approved by the department.

14 (5) Any person who, without having a valid permit under sub. (1), sells or
15 solicits sales of cigarettes to consumers in this state by direct marketing shall pay
16 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
17 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
18 marketing, whichever is greater.

19 (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may
20 exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser
21 or address.

22 (b) Any person who sells cigarettes that exceed the maximum amounts under
23 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal
24 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
25 maximum amounts, whichever is greater.

1 (c) Any person who purchases cigarettes that exceed the maximum amounts
2 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the
3 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased
4 above the maximum amounts.

5 (7) No cigarettes may be shipped to a person who is under 18 years of age and
6 no cigarettes may be shipped to a post-office box. Every package used to ship tobacco
7 products that are sold as provided under this section and delivered to a person in this
8 state shall be clearly labeled to indicate that the package contains tobacco products
9 and may not be delivered to a person who is under 18 years of age.

10 (8) All revenue collected from permits and penalties under this section shall
11 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
12 administer this section.

13 **SECTION 46.** 139.35 (1) of the statutes is amended to read:

14 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
15 and no person may accept, purchase or borrow any stamps from another. All sales
16 and transfers of stamps may be made only by the secretary to permit holding
17 manufacturers, bonded direct marketers who are authorized to purchase and affix
18 tax stamps, and distributors.

19 **SECTION 47.** 139.37 (1) (a) of the statutes is amended to read:

20 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
21 ~~resale~~ solicit cigarette sales in this state ~~for any manufacturer or permittee without~~
22 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
23 certificate under s. 73.03 (50) and a salesperson's permit from the department of
24 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
25 or take orders for cigarettes solicit cigarette sales in this state ~~without first having~~

1 ~~such person secure~~ unless the person has filed an application for and obtained a valid
2 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
3 another person to sell cigarettes or solicit cigarette sales in this state unless the
4 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
5 and a valid permit under s. 139.34. The department shall issue the required number
6 of permits to ~~manufacturers and~~ permittees who hold a valid certificate issued under
7 s. 73.03 (50). Each application for a permit shall disclose the name and address of
8 the employer or the person for whom the sales person is soliciting and such permit
9 shall remain effective only while the salesperson represents such named employer
10 or person. If such salesperson is thereafter employed by another ~~manufacturer or~~
11 ~~permittee person,~~ the salesperson shall obtain a new salesperson's permit. Each
12 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
13 resignation or dismissal of any such salesperson holding a permit.

14 **SECTION 48.** 139.38 (1) of the statutes is amended to read:

15 139.38 (1) Every manufacturer located out of the state shall keep records of all
16 sales of cigarettes shipped into this state. Every manufacturer located in the state
17 shall keep records of production, sales and withdrawals of cigarettes. Every
18 distributor and direct marketer shall keep records of purchases and sales of
19 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
20 ~~permit from the secretary with the right~~ who is authorized to purchase and apply
21 stamps shall also keep records of purchases and disposition of stamps. Every jobber,
22 multiple retailer, and vending machine operator shall keep records of all purchases
23 and disposition of cigarettes. Every warehouse operator shall keep records of
24 receipts and withdrawals of cigarettes. All such records shall be accurate and
25 complete and be kept in a manner prescribed by the secretary. These records shall

1 be preserved on the premises described in the permit or license in such a manner as
2 to ensure permanency and accessibility for inspection at reasonable hours by
3 authorized personnel of the department.

4 **SECTION 49.** 139.38 (1m) of the statutes is created to read:

5 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
6 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
7 state in the month preceding the report under sub. (2), the invoice date and number;
8 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
9 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
10 address, and birth date; the name of the person to whom the cigarettes were shipped;
11 the address to which the cigarettes were shipped; and any other information the
12 department requires.

13 **SECTION 50.** 139.38 (2) of the statutes is amended to read:

14 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
15 distributor, jobber, and direct marketer shall render a true and correct invoice of
16 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
17 day of each calendar month file a verified report of all cigarettes purchased, sold,
18 received, warehoused or withdrawn during the preceding calendar month.

19 (b) The department may allow any jobber, multiple retailer, direct marketer
20 permittee, or vending machine operator permittee who does not sell cigarettes,
21 except for those on which the tax under this chapter is paid, to file a quarterly report.
22 The quarterly report shall be filed on or before the 15th day of the next month
23 following the close of each calendar quarter. The report shall specify the number of
24 cigarettes purchased and sold during the preceding calendar quarter.

25 **SECTION 51.** 139.395 of the statutes is amended to read:

1 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
2 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on
3 which the tax under this subchapter has become due and has not been paid are trust
4 funds in the hands of the distributor, bonded direct marketer, or manufacturer and
5 are the property of this state. Any distributor, bonded direct marketer, or
6 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette
7 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),
8 whether or not the distributor, bonded direct marketer, or manufacturer has or
9 claims to have an interest in those moneys.

10 **SECTION 52.** 139.40 (2) of the statutes is amended to read:

11 139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~
12 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.
13 (1) may be given to law enforcement officers to use in criminal investigations or sold
14 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
15 deducting the costs of the sale and the keeping of storing the property, the proceeds
16 of the sale shall be paid into the state treasury, except that proceeds from the sale
17 of cigarettes seized from a direct marketer and obtained through the administration
18 of this subsection shall be credited to the appropriation account under s. 20.566 (1)
19 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
20 use in criminal investigations or for sale or that those uses would otherwise be
21 impractical, the secretary may order them destroyed or give them to a charitable or
22 penal institution for free distribution to patients or inmates.

23 **SECTION 53.** 139.44 (3) of the statutes is amended to read:

24 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
25 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 ~~\$500~~ nor more than

1 ~~\$500~~ \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than
2 \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both ~~for the 2nd or~~
3 subsequent offense.

4 **SECTION 54.** 139.44 (4) of the statutes is amended to read:

5 139.44 (4) Any person who refuses to permit the examination or inspection
6 authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than \$500 ~~nor more~~
7 than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be
8 cause for immediate suspension or revocation of permit by the secretary.

9 **SECTION 55.** 139.44 (6m) of the statutes is created to read:

10 139.44 (6m) Any person who manufactures or sells cigarettes in this state
11 without holding the proper permit issued under this subchapter is guilty of a Class
12 I felony.

13 **SECTION 56.** 139.44 (7) of the statutes is amended to read:

14 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
15 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
16 person convicted of a 2nd or subsequent offense shall be automatically revoked ~~and~~
17 ~~he or she, the person~~ shall not be granted another permit for a period of ~~2~~ 5 years
18 following such revocation, ~~and, for the 5 year period following revocation, the person~~
19 shall not act as the employee or agent of a permittee under this subchapter to perform
20 acts authorized by any permit issued to the permittee under this subchapter.

21 **SECTION 57.** 139.45 of the statutes is amended to read:

22 **139.45 Prosecutions by attorney general.** Upon request by the secretary
23 of revenue, the attorney general may represent this state or assist a district attorney
24 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

25 **SECTION 58.** 139.75 (2) of the statutes is amended to read:

1 139.75 (2) “Consumer” means any individual who receives tobacco products for
2 his or her personal use or consumption or any person individual who has title to or
3 possession of tobacco products ~~in storage for use or other consumption in this state~~
4 any purpose other than for sale or resale.

5 **SECTION 59.** 139.75 (3g) of the statutes is created to read:

6 139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco
7 products to consumers in this state by direct marketing.

8 **SECTION 60.** 139.75 (3r) of the statutes is created to read:

9 139.75 (3r) “Direct marketing” means publishing or making accessible an offer
10 for the sale of tobacco products to consumers in this state, or selling tobacco products
11 to consumers in this state, using any means by which the consumer is not physically
12 present on a premise that sells tobacco products.

13 **SECTION 61.** 139.75 (4) (a) of the statutes is amended to read:

14 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
15 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
16 the state any tobacco products for sale;

17 **SECTION 62.** 139.75 (4) (c) of the statutes is amended to read:

18 139.75 (4) (c) Any person outside this state engaged in the business of selling
19 tobacco products ~~outside this state~~ who ships or transports tobacco products to
20 retailers in this state to be sold by those retailers.

21 **SECTION 63.** 139.75 (4) (cm) of the statutes is created to read:

22 139.75 (4) (cm) Any person outside this state engaged in the business of selling
23 tobacco products who ships or transports tobacco products to consumers in this state.

24 **SECTION 64.** 139.75 (4n) of the statutes is created to read:

1 139.75 (4n) “Government issued identification” includes a valid driver’s
2 license, state identification card, passport, or military identification.

3 **SECTION 65.** 139.75 (5s) of the statutes is created to read:

4 139.75 (5s) “Person” means any individual, sole proprietorship, partnership,
5 limited liability company, corporation, or association, or any owner of a single-owner
6 entity that is disregarded as a separate entity under ch. 71.

7 **SECTION 66.** 139.75 (7) of the statutes is amended to read:

8 139.75 (7) “Retail outlet” means each place of business from which tobacco
9 products are sold to consumers by a retailer.

10 **SECTION 67.** 139.75 (12) of the statutes is amended to read:

11 139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;
12 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
13 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;
14 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
15 and forms of tobacco prepared in such manner as to be suitable for chewing or
16 smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco
17 products” does not include cigarettes, as defined under s. 139.30 (1) (1m).

18 **SECTION 68.** 139.76 (3) of the statutes is created to read:

19 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
20 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
21 products.

22 **SECTION 69.** 139.78 (1m) of the statutes is created to read:

23 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
24 distributor with a valid permit under s. 139.79 may import into this state tobacco
25 products for which the tax imposed under s. 139.76 (1) has not been paid.

1 **SECTION 70.** 139.79 (title) of the statutes is amended to read:

2 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

3 **SECTION 71.** 139.79 (1) of the statutes is amended to read:

4 139.79 (1) No person may engage in the business of a distributor, direct
5 marketer, or subjobber of tobacco products at any place of business unless that
6 person has filed an application for and obtained a permit from the department to
7 engage in that business at such place.

8 **SECTION 72.** 139.79 (2) of the statutes is amended to read:

9 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
10 this section.

11 **SECTION 73.** 139.795 of the statutes is created to read:

12 **139.795 Direct marketing. (1)** (a) No person may sell tobacco products by
13 direct marketing to consumers in this state as a direct marketer or solicit sales of
14 tobacco products to consumers in this state by direct marketing unless the person has
15 obtained a permit from the department to make such sales or solicitations. The
16 person shall file an application for a permit under this subsection with the
17 department, in the manner prescribed by the department, and shall submit a \$500
18 fee with the application.

19 (b) No person may be issued a permit under this subsection unless the person
20 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
21 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
22 this subsection.

23 (c) A permit issued under this subsection expires on December 31 of each year.

24 (d) No person may be issued a permit under this subsection unless the person
25 certifies to the department, in the manner prescribed by the department, that all

1 tobacco product sales to consumers in this state shall be credit card transactions; that
2 the invoice for all shipments of tobacco product sales from the person shall bear the
3 person's name and address and permit ultimately issued under this subsection; and
4 that the person shall provide the department any information the department
5 considers necessary to administer this section.

6 (2) No person may sell tobacco products to consumers in this state by direct
7 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has
8 been paid with regard to such products.

9 (3) No person may sell tobacco products to a consumer in this state by direct
10 marketing unless the person does all of the following:

11 (a) The person uses a mechanism, approved by the department, to verify the
12 consumer's age.

13 (b) The person receives from the consumer, at the time of purchase, a copy or
14 facsimile of a government issued identification, the name specified on the
15 identification matches the name of the consumer.

16 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
17 for verifying the age and identity of a consumer that is approved by the department.

18 (4) Any person who, without having a valid permit under sub. (1), sells or
19 solicits sales of tobacco products to consumers in this state by direct marketing shall
20 pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent
21 of the tax due on the tobacco products the person sold, without having a valid permit
22 under sub. (1), to consumers in this state by direct marketing, whichever is greater.

23 (5) No tobacco products may be shipped or delivered to a person who is under
24 18 years of age and no tobacco products may be shipped to a post-office box. Every
25 package used to ship tobacco products that are sold as provided under this section

1 and delivered to a person in this state shall be clearly labeled to indicate that the
2 package contains tobacco products and may not be delivered to a person who is under
3 18 years of age.

4 (6) All revenue collected from permits and penalties under this section shall
5 be credited to the appropriation account under s. 20.566 (1) (gc).

6 SECTION 74. 139.81 (1) of the statutes is amended to read:

7 139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~
8 solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~
9 unless the person has filed an application for and obtained a valid certificate under
10 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~
11 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products ~~or~~
12 solicit sales of tobacco products in this state unless the person has filed an application
13 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.
14 No person may authorize another person to sell tobacco products or solicit sales of
15 tobacco products in this state unless the person has filed an application for and
16 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

17 Each application for a permit shall disclose the name and address of the employer
18 and shall remain effective only while the salesperson represents the named
19 employer. If the salesperson is thereafter employed by another ~~manufacturer or~~
20 permittee person the salesperson shall obtain a new salesperson's permit. Each
21 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
22 resignation or dismissal of any salesperson holding a permit.

23 SECTION 75. 139.81 (2) of the statutes is amended to read:

24 139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this
25 section.

1 **SECTION 76.** 254.911 (1) of the statutes is amended to read:

2 254.911 (1) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

3 **SECTION 77.** 891.455 (4) of the statutes is amended to read:

4 891.455 (4) The presumption under sub. (2) for cancers caused by smoking or
5 tobacco product use shall not apply to any municipal fire fighter who smokes
6 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined
7 in s. 139.75 (12), after January 1, 2001.

8 **SECTION 9441. Effective dates; revenue.**

9 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The repeal of
10 section 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. of the statutes, the renumbering of
11 section 139.30 (1) of the statutes, the amendment of sections 77.61 (11), 134.65 (1),
12 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (d),
13 134.66 (2) (e), 139.30 (3), 139.30 (7), 139.32 (1), 139.32 (4), 139.32 (5), 139.32 (5m),
14 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1) (a), 139.34 (1)
15 (c) (intro.), 139.34 (3), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a),
16 139.38 (1), 139.38 (2), 139.395, 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7), 139.45,
17 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (12), 139.79 (title), 139.79
18 (1), 139.79 (2), 139.81 (1), 139.81 (2), 254.911 (1) and 891.455 (4), of the statutes and
19 the creation of sections 20.566 (1) (gc), 134.65 (1n), 134.65 (1r), 134.66 (1) (am),
20 134.66 (3m), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2nn), 139.30 (2p), 139.30
21 (4n), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1) (c) 3m., 139.34 (1)
22 (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r), 139.75 (4) (cm),
23 139.75 (4n), 139.75 (5s), 139.76 (3), 139.78 (1m) and 139.795 of the statutes take
24 effect on July 1, 2006.

25 **(END)**

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Wednesday, January 26, 2005 4:51 PM
To: Kreye, Joseph
Subject: FW: Comments on LRB-1598/4 - direct marketing of

These comments are in addition to mine (requesting the deletion of the appropriation). Thanks- Jenny
 -----Original Message-----

From: Lashore, Patricia M
Sent: Wednesday, January 26, 2005 4:46 PM
To: Kraus, Jennifer - DOA
Subject: Comments on LRB-1598/4 - direct marketing of cigs

Please see the comments below.

-----Original Message-----

From: Gates-Hendrix, Sherrie
Sent: Wednesday, January 26, 2005 4:45 PM
To: Lashore, Patricia M
Subject: Comments on LRB-1598/4 - direct marketing of cigs

EXPLANATION OF CHANGES TO LRB-1598/4

Pg. 1

ADD personal liability to both cigarette and tobacco statutes: see motor fuel s.78.70(6).
 (To be consistent with other tax statutes such as motor fuel and income -- needed in cigarette and tobacco.)

Pg. 2, 1st paragraph, 4th line: "direct marketer sell ~~no more~~ less than 600,000 cigarettes...."

Pg. 2, 1st paragraph, 5th line: "If the direct marketer sells ~~more than~~ 600,000 or more cigarettes...."
 (To agree with Pg. 14, lines 11-14.)

Pg. 6, Line 11-12: Change to "...or subsequent offense the court shall ~~immediately terminate-revoke~~ the license of the person...."

(To be consistent with other excise statute terminology and acknowledge that only the court would revoke the license of retailer. DOR does not issue retail licenses. These are issued by the municipality.)

***Pg. 8, Line 22:** "Direct marketer" means a bonded direct marketer or a non-bonded direct marketer ~~permittee.~~ AND

***Pg. 9, Line 1:** "Non-bonded direct marketer ~~permittee~~ means any person who"

(To use "permittee" as part of a permit title would be too confusing as "permittee" is a term used interchangeably for all excise permits. To be clear, use "non-bonded" to define this permit type to be clear. Previous suggestion of "permitted direct marketer is not the same as direct marketer permittee.)

Pg. 9, Line 16: "Government issued identification" has the same meaning given in 134.66(1)(c) ~~includes a valid driver's license, state identification card, passport, or military identification.~~
 (Use current law for acceptable identification and to avoid multiple definitions.)

ADD: Amend 139.30(10) as follows:

"Retailer" has the same meaning as 134.66(1)(g) ~~means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes.~~

(To be consistent and to be sure that the law requires all retailers hold a retail license.)

Pg. 10, Line 6: "a manufacturer to a distributor or to a **bonded** direct marketer or by a distributor..."
(To be clear not to include a non-bonded direct marketer who cannot receive unstamped cigarettes.)

Pg. 11, Line 10: "a ~~licensed~~ distributor, or a ~~licensed~~ bonded direct marketer who is **authorized by the department to ...**"

- (1. Distributors and bonded direct marketers do not hold licenses. They are issued permits.)
- (2. "who is authorized by the department to purchase and affix tax stamps" should cover whether they hold a permit. DOR would not authorize a person without holding the proper permits.)

PLEASE CHECK ALL AREAS OF THIS LEGISLATION FOR "who is authorized to ..." . As it should read "who is authorized by the department to ..." to alleviate any misinterpretations as to who authorizes.

Pg. 11, Line 18: "purchased in any armed forces post exchange or service store for his or her personal use or consumption."
(To be clear that persons in the armed forces may not purchase unstamped cigarettes for sale or resale but only as a consumer.)

EXPLANATION OF CHANGES TO LRB-1598/4

Pg. 2

Pg. 14, Line 1: "manufacturer, **bonded** direct marketer, or distributor may be delivered only...."
(Relates to unstamped cigarettes that only a bonded direct marketer may receive.)

Pg. 14, Line 2-3: "holding a permit as a manufacturer, **distributor**, or ~~as a bonded direct marketer~~ who is authorized **by the department** to purchase and affix tax stamps, ~~or distributor~~.
(To be clear that department authorization applies to manufacturer, distributor *and* bonded direct marketer.)

Pg. 17, Line 6-7 and 8: Delete "tobacco products: and change to "cigarettes".
(Cigarette statutes cannot use the term "tobacco products" and vs. since WI has a separate statute for each.)

Pg. 17, Line 17-18: "manufacturers, **distributors and** bonded direct marketers who are authorized to purchase and affix tax stamps, ~~and distributors~~.
(To be clear that department authorization applies to manufacturer, distributor *and* bonded direct marketer.)

Pg. 18, Line 3: ~~"another person to sell the sale of cigarettes or solicit the solicitation of cigarettes sales in this state..."~~
(To alleviate any misunderstandings due to the use of "person" used twice but meaning two separate persons.)

Pg. 19, Line 19-20: "multiple retailer, **non-bonded** direct marketer ~~permittee~~, or vending machine..."
(To be specific as to the type of permit so as not to include a bonded direct marketer for quarterly filing.)

Pg. 23, Line 1-2: Do same as cigarette on **Pg. 9, Line 16:** "Government issued identification" has the same meaning given in 134.66(1)(c) includes a valid driver's license, state identification card, passport, or military identification.
(Use current law for acceptable identification and to avoid multiple definitions.)

Pg. 23. ADD 139.75(8) of the statutes is amended to read:
"Retailer" has the same meaning as 134.66(1)(g) means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes.
(To be consistent and to be sure that the law requires all retailers hold a retail license.)

Pg. 26, Line 14-15:
~~"No person may authorize another person to sell the sale of tobacco products or solicit sales of the solicitation of tobacco products in this state..."~~
(To alleviate any misunderstandings due to the use of "person" used twice but meaning two separate persons.)